

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

|                 |   |                      |
|-----------------|---|----------------------|
| Daniel Muller,  | : |                      |
| Petitioner,     | : |                      |
|                 | : |                      |
| v.              | : | File No. 1:06-CV-118 |
|                 | : |                      |
| Robert Hofmann, | : |                      |
| Respondent.     | : |                      |

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
(Papers 1 and 10)

On June 16, 2006, Daniel Muller petitioned this Court *pro se* for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondent, through counsel, now informs the Court that Muller died on September 4, 2006. The respondent has provided the Court with a copy of Muller's death certificate, and has filed a motion to dismiss. (Paper 10).

Because Muller is no longer "in custody" as required by 28 U.S.C. § 2241(c), and because no relief can be provided to him by a writ of habeas corpus, I recommend that the respondent's motion to dismiss (Paper 10) be GRANTED, and that Muller's petition (Paper 1) be DISMISSED as moot. See Knapp v. Baker, 509 F.2d 922, 922-23 (5<sup>th</sup> Cir. 1975); Hann v. Hawk, 205 F.2d 839, 840 (8<sup>th</sup> Cir. 1953); Rivera v. Pearlman, 2004 WL 533333, at \*1 (S.D.N.Y. March 16, 2004).

Dated at Burlington, in the District of Vermont,  
this 26<sup>th</sup> day of October, 2006.

/s/ Jerome J. Niedermeier  
Jerome J. Niedermeier  
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).